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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/543,407	04/05/2000	Aaron P. White	920043.406	7308
7590	12/12/2003		EXAMINER	
David D McMasters Seed Intellectual Property Law Group PLLC 701 Fifth Avenue Suite 6300 Seattle, WA 98104-7092			FORD, VANESSA L	
			ART UNIT	PAPER NUMBER
			1645	
DATE MAILED: 12/12/2003				

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No.	Applicant(s)
	09/543,407	WHITE ET AL.
Examiner	Art Unit	
Vanessa L. Ford	1645	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 18 April 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on 18 April 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Attachment.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 56-59, 65-68 and 74.

Claim(s) withdrawn from consideration: 60-64 and 69-73.

8.  The proposed drawing correction filed on \_\_\_\_\_ is a)a) approved or b)b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s). \_\_\_\_\_.

10.  Other: See Advisory attachment.

***Advisory Action Attachment***

1. Applicants amendment filed April 18, 2003 is acknowledged.
2. Applicants amendment is not entered because the claim as amended would require further consideration and require new searches. As amended the claims are directed to SEQ ID Nos: 12, 14, 16, 18, 20, 22, 24, 26, 28 and 30. These sequences have been newly added and were not the subject of the sequence searches in the previous Office actions. The claim limitations as amended have not been search or considered before the submission of the After Final Amendment. Additionally, the claims as amended would raise new 112 issues. New issues would include 112, first paragraph issues such as enablement, because the claims as amended do not recite a function that is associated with the recombinant nucleic acid molecule.
3. The Applicant's arguments regarding the rejection of claims 56-59, 65-68 and 74 under 35 U.S.C. 102(b) as anticipated by Kay et al, were addressed on pages 3-6, paragraph 4 of the previous Office Action.

**Status of Claims**

4. No claims are allowed.

***Conclusion***

5. Any inquiry of the general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Office Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for the Group 1600 is (703) 308-4242.

Any inquiry concerning this communication from the examiner should be directed to Vanessa L. Ford, whose telephone number is (703) 308-4735. The examiner can normally be reached on Monday – Friday from 7:30 AM to 4:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (703) 308-3909.

  
Vanessa L. Ford  
Biotechnology Patent Examiner  
November 21, 2003

  
MARK NAVARRO  
PRIMARY EXAMINER